

Appellate and Summary Judgment Decisions



Seth A. Dymond, Esq.
Belluck & Fox
New York, NY



Suzanne M. Halbardier, Esq.
Barry McTiernan & Moore
New York, NY



Pierre Ratzki, Esq.
Weitz & Luxenberg, P.C.
New York, NY



Whitney D. Seltzer, Esq.
Foley & Mansfield
New York, NY



Perrin Conferences New York
Asbestos Litigation Conference

Appellate and Summary Judgment Decisions 2022 - 2023

Seth A. Dymond, Esq., Belluck & Fox, LLP

Suzanne M. Halbardier, Esq., Barry McTiernan & Moore, LLC

Pierre Ratzki, Esq., Weitz & Luxenberg, PC

Whitney D. Seltzer, Esq., Foley Mansfield, PLLP

Causation

Applicability of *Nemeth* and Sufficiency of Expert Proofs

Appellate

- *Sason* (1st Dept) – Nov. 2023 - SJM denial affirmed. Defense IH established absence of specific causation, but Plaintiff's medical and IH experts raised issue of fact, the Court finding the studies upon which their opinions were based to "satisfy the scientific expression requirements articulated by the Court of Appeals in *Nemeth*" (citing *Dyer*), creating "classic 'battle of the experts.'"

Post-Trial

- *Viglietta* (8th JDAL, Judge Chimes) – Nov. 2022 – Motion denied in entirety, including causation. Appeal currently pending but Defendant not challenging causation.
- *Seen* (NYCAL, Judge Adams) – March 2023 – Motion denied in entirety, including remittitur. Plaintiff's causation expert relied on sufficient studies indicating comparable exposure levels for joint compound work.
- *McWilliams* (NYCAL, Judge Adams) – Sept. 2023 – Motion denied in entirety, including remittitur. "No reasonable comparison" between study in *Nemeth* and "well-established methods used by Plaintiff's experts in this matter..."
- *Skrzynski* (8th JDAL, Judge Pace) – Sept. 2023 – Motion denied. Friction Defendant unsuccessful in challenging both Plaintiff's general and specific causation evidence.

Summary Judgment

- *Daniell* (Nassau, Judge McCormack) – April 2023 – SJM granted. Plaintiff's expert's cumulative exposure opinion insufficient to create question of fact in secondary exposure lung cancer case with heavy smoking history.
- *Campise* (8th JDAL, Judge Walter) – May 2023 – SJM denied as to causation, granted as to punitives. Plaintiff provided sufficient expert evidence to create question of fact overcoming talc supplier's challenges to both general and specific causation. Industry's failure to use "most cutting-edge technology available" doesn't rise to "deliberate concealment" in face of disagreement within scientific community.
- *Schad* (Westchester, Judge Murphy) – July, Aug. 2023 – SJMs denied. Defendants' experts' opinions fail to meet their initial burdens in affirmatively demonstrating their products did not cause Plaintiff's injuries.
 - *Frederick, Nankervis* (NYCAL, Judge Silvera) – Oct. 2023 - SJMs denied. Defendant's IH opinions fail to connect defendant's products to the relied-upon exposure studies for similar products.
- *Cardillo* (NYCAL, Judge Silvera) – Oct. 2023 - SJM denied. Defendant's reliance on *Nemeth* misplaced – not the burden on SJM, issues of fact as to asbestos-contamination of defendant's talc.
- *Budny* (Nassau, Judge McCormack) – Nov. 2023 – SJM denied on procedural grounds, but Court opines that had Defendant met its burden, Plaintiff's expert proofs were sufficient to create a question of fact.

... And The Other Stuff !

Product Identification

- *Howard* (3rd Dept) – Jan. 2023 – SJM properly denied where defendant failed to demonstrate Plaintiff could not have encountered its products on Navy ships.
- *Horvath* (NYCAL, Judge Silvera) – Oct. 2023 – Plaintiff's failure to identify specific location where he encountered defendant's product insufficient basis for summary judgment.

Personal Jurisdiction

- *Vavala* (1st Dept) – Jan. 2023 – Reversed MTD denial, finding plaintiff failed to connect NY with his CT-based exposure and defendant's CT-based business.

Punitive Damages

- *Wolf* (NYCAL, Judge Silvera) – March 2023 – Partial SJM denied when argument that any potential exposure was below OSHA PEL was supported by only a single study specific to neither Plaintiff's allegations nor Defendant's product.

Expert Discovery

- *Hough* (4th JDAL, Judge Gall) – Aug. 2022 – Denial of defense motion to depose Dr. Zhang on causation opinions related to Plaintiff's WDPMT diagnosis.
- *English/Rasso* (NYCAL, Judge Silvera) – April 2023 (Reargument denied Nov. 2023) – Defendant's motion to preclude late-disclosed expert materials or alternatively strike NOI and engage in expert discovery denied in entirety.
- *Cardillo* (NYCAL, Judge Silvera) – April 2023 – Modification of Special Master Recommendation in favor of moving defendant in turning over product samples for testing.
- *Cardillo* (NYCAL, SM Goldstein) – Sept. 2023 – Denial of defense application to depose Dr. Moline on causation opinions, discusses *Hough*.